

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KAYCEE GROVEN,

Charging Party,

-v-

HAVRE EAGLES CLUB NO. 166,

Respondent/Appellant,

Case # 0101014036

FINAL AGENCY DECISION

Charging Party, Kaycee Groven, filed a complaint with the Human Rights Bureau, Department of Labor and Industry (Department), which alleged discrimination in employment on the basis of gender (sexual harassment), which created a hostile work environment at Havre Eagles Club, No. 166. Following an informal investigation, the Department determined that a preponderance of the evidence supported Groven's allegations. The case went before the Hearings Bureau of the Department of Labor and Industry, which held a contested case hearing, pursuant to § 49-2-505, MCA. The hearings officer issued a Decision on April 8, 2011.

The hearings officer determined that Havre Eagles Club discriminated against Groven on the basis of gender, in violation of the Montana Human Rights Act. The sexual harassment perpetrated by the Club's general manager Thomas Farnham resulted in a hostile and abusive work environment. The hearing officer further concluded that the Havre Eagles Club had constructively discharged Groven from her employment because working conditions had become both subjectively and objectively intolerable.

The hearings officer proposed that Havre Eagles Club compensate Groven in the amount of \$193,502.47, which represented \$44,069.00 in lost wages and benefits to the date of the decision; \$5,118.20 in prejudgment interest; \$69,246.00 in lost future earnings; and \$75,000.00

in emotional distress damages. The hearing officer further proposed that Havre Eagles Club take specific affirmative action to ensure that no further discrimination on the basis of sex occurs.

Havre Eagles Club, No. 166, filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 20, 2011. Lindsay A. Lorang, attorney, appeared and argued on behalf of the Havre Eagles Club, No. 166. Ms. Lorang did not dispute the liability of Havre Eagles Club for the sexual harassment and hostile work environment that Groven experienced, but argued that the hearing officer's award for compensatory damages was excessive.

The Commission determined that the hearing officer's findings of fact wholly supported the conclusion that Groven was subjected to sexually hostile work environment during the years she worked Havre Eagles Club No. 166. However, the Commission found the hearing officer made a mistake in his determination that \$75,000.00 was sufficient to compensate Groven for the extreme emotional distress that she experienced over the years of her employment with Havre Eagles Club No. 166. By unanimous vote, the Commission remanded this case to the Hearings Bureau for further consideration of the compensatory award for emotional distress damages. See, August 4, 2011 Order of the Human Rights Commission.

The Hearings Bureau Order After Remand was issued on September 28, 2011. The hearing officer determined that the record supported an increase in the award of emotional distress damages to Kaycee Grove to the total amount of \$100,000.00. Respondent appealed to Human Rights Commission. The Commission heard the matter on November 17, 2011. No oral argument was requested by the parties.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of the administrative rules in the hearing officer's decision but it may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in

the order the findings that were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. *Admin. R. Mont. 24.9.123(4)*. A finding of fact is clearly erroneous if it is not supported by substantial evidence in the record, if the fact finder misapprehended the effect of the evidence, or if a review of the record leaves the court with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3d 284, ¶ 39. The Commission's standard of review for conclusions of law is whether the hearing officer's interpretation and application of the law is correct. *Denke*, ¶ 39.

When the hearing officer finds a party against whom a complaint was filed engaged in the discriminatory practice alleged in the complaint, the Department of Labor and Industry shall order the party to refrain from engaging in the discriminatory conduct and may require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against. *Mont. Code Ann. § 49-2-506(1)(b)*.

DISCUSSION

After careful consideration of the complete record, the Commission affirms the hearing officer's findings of fact and conclusions of law in its entirety. The Commission finds that the hearing officer's decision to increase the emotional distress damage award to Kaycee Groven is justified by the years Groven was forced to endure extreme sexual harassment in her workplace, which was perpetrated by her supervisor, Thomas Farnham. Groven repeatedly requested the Board of Trustees of the Eagles Club to intercede and stop the harassment, but the employer did nothing to curtail Farnham's unwelcome attentions. The severity of Farnham's sexual harassment is evidenced by his criminal conviction for sexual assault against Groven. The severity and long duration of the sexual harassment experienced by Groven support the increase in the damage award, despite all arguments marshaled by the Respondent. Therefore, the

Commission determines that substantial, credible evidence supports the hearing officer's decision and that the hearing officer correctly applied the law.

ORDER

IT IS HEREBY ORDERED, the appeal of Havre Eagles Club No. 166 is denied.

IT IS FURTHER ORDERED, the Commission hereby adopts and incorporates the entire of the hearing officer's Order After Remand, dated September 28, 2011, within this Final Agency Decision.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA*. This review must be requested within 30 days of the date of this order.

DATED this 21st day of November 2011.

/L.M.Minich/
L.M. Minich, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing FINAL AGENCY DECISION was mailed to the following by U.S.

Mail, postage prepaid, on this 21st day of November 2011.

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